

THE HONORABLE Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD L. AHEARN, Regional Director of the
Nineteenth Region of the National Labor
Relations Board, for and on behalf of the
NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

INTERNATIONAL LONGSHORE and WAREHOUSE
UNION, LOCAL 21

Respondent

and

INTERNATIONAL LONGSHORE and WAREHOUSE
UNION, LOCAL 4

Respondent

)
)
)
)
) Civil No. 3:11-CV-05684
)
)
) MEMORANDUM OF POINTS
) AND AUTHORITIES IN
) SUPPORT OF PETITIONER'S
) MOTION TO FIND
) RESPONDENTS
) IN CONTEMPT AND TO SIGN
) PROPOSED ORDER
) ADJUDICATING
) RESPONDENTS IN CIVIL
) CONTEMPT
)
)
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1	TABLE OF CONTENTS	
2		
3	I.	Statement of Case 2
4	II.	Statement of Facts 5
5	A.	Background 5
6	B.	Respondents Engage in Mass Picketing and Blocking
7		Of the Train in Vancouver, Washington Destined for EGT's
8		Facility 5
9		
10	C.	Respondents and Their Supporters Engage in Further Mass
11		Picketing and Blocking of the BNSF Train at the Entrance to
12		EGT's Facility 7
13		
14	D.	Respondents' Violent Conduct Escalates and They Damage
15		Both the BNSF Train and EGT's Property..... 8
16		
17	III.	Argument..... 10
18	A.	Applicable Principles of Civil Contempt 10
19	B.	Respondents' Misconduct Violates the Temporary
20		Restraining Order and Act 12
21		
22	C.	Contempt Sanctions 14
23	1.	Cease and Desist Order; Affirmative Purgation Order;
24		Remedies; Compliance Report; Discovery..... 14
25		
26	2.	Propective Fines 14
27	3.	Compensatory Remedies 15
28		
29	4.	Interim Relief 16
30	IV.	Conclusion 18

Table of Authorities

Cases:

<u>Federal Trade Commision v. Affordable Media, LLC,</u>	
179 F.3d 1228, 1239 (9 th Cir. 1999)	11
<u>Gompers v. Buck's Stove & Range Co.,</u>	
221 U.S. 418, 450 (1911)	10
<u>Hoffman v. ILWU, Local 10,</u>	
492 F.2d 929, 933 (9 th Cir. 1974)	17
<u>Humphrey v. Southside Electric Cooperative, Inc.,</u>	
104 L.R.R.M. (BNA) 2589, 2592 (E.D. Va 1979)	15
<u>In re Bennett,</u>	
298 F.3d 1059, 1069 (9 th Cir. 2002)	11
<u>In re Crystal Palace Gambling Hall, Inc.,</u>	
817 F.2d 1361, 1365 (9 th Cir. 1987)	11
<u>Iron Workers Dist. Council of the Pac. NW. v NLRB,</u>	
913 F.2d 1470, 1477 (9 th Cir. 1990)	13
<u>Jim Walters Resources, Inc. v. International Union, United Mine Workers of America,</u>	
609 F.2d 165, 168 (5 th Cir. 1980)	11
<u>Madden v. Grain Elevator, Flour & Feed Mill Workers,</u>	
334 F.2d 1014, 1020 (7 th Cir. 1974)	17
<u>Maness v. Meyers,</u>	
419 U.S. 449, 458 (1975)	11
<u>Muniz v. Hoffman,</u>	
422 U.S. 454 (1975)	17
<u>NLRB v. A-Plus Roofing</u>	
39 F.3d 1410, 1419 (9 th Cir. 1994)	15
<u>NLRB v. Int'l Assn'n of Bridge, Structural and Ornamental Ironworkers, Local 86,</u>	
79 LRRM 2723, 2724 (9 th Cir. 1972)	14
<u>NLRB v. Iron Workers Local 433,</u>	
169 F.3d 1271, 1221 -22 (9 th Cir. 1999)	15
<u>NLRB v. Miramer of Cal., Inc.,</u>	
601 F.2d 422, 425 (9 th Cir. 1979)	13
<u>NLRB v. Sequoia District Council of Carpenters,</u>	
568 F.2d 628,636 (9 th Cir. 1977)	16
<u>NLRB v. Service Employees Local 77, 123.,</u>	
L.R.R.M. 3213, 3214-3215 (9 th Cir. 1986)	16
<u>NLRB v. Teamsters Local 85,</u>	
101 L.R.R.M. (BNA) 2933, 2934-35	14
<u>NLRB v. Teamsters Local 327,</u>	
592 F.2d 921, 923 (6 th Cir. 1979)	18
<u>NLRB v. Trans Ocean Export Packing, Inc.,</u>	
473 F.2d 612 (9 th Cir. 1973))	16
<u>Perfect Fit Industries, Inc. v. Acme Quilting Co.,</u>	
673 F.2d 53, 57 (2d Cir.) <i>cert. denied</i> 459 U.S. 832 (1982)	15

1	<u>Reno Air Racing Assn. v. McCord,</u>	
2	452 F.3d 1126, 1130 (9 th Cir. 2006).....	11
3	<u>Securities and Exchange Commission v. First Finacial Group of Texas, Inc.,</u>	
4	659 F.2d 660, 669 (5 th Cir. 1981).....	10
5	<u>Sheet Metal Workers v. EEOC,</u>	
6	478 U.S. 421 (1986)	16
7	<u>Stone v. City and County of San Francisco,</u>	
8	968 F.2d 850, 856 (9 th Cir.1992).....	10
9	<u>Szabo v. U.S. Marine Corp.,</u>	
10	819 F.2d 714, 718 (7 th Cir 1987).....	11
11	<u>United Mine Workers of America v. Bagwell,</u>	
12	512 U.S. 821, 838 (1994)	16
13	<u>United States v. United Mine Workers of America,</u>	
14	330 U.S. 258, 293, 303, 304 (1947).....	10, 13
15	<u>Whittaker Corp. v. Execuair Corp.,</u>	
16	953 F.2d at 510, 516 (9 th Cir. 1992) 15	
17		
18		
19		
20		
21		
22		
23		
24		
25		
26	Statutes	
27		
28	29 U.S.C. § 157(7)	Passim
29	29 U.S.C § 160(j)	Passim
30	29 U.S.C § 160(l)	Passim
31		
32		
33		
34		
35		

1 I. STATEMENT OF THE CASE

2 Counsel for the Petitioner moves this Court, for and on behalf of the National Labor
 3 Relations Board ("Board"), to adjudicate International Longshore and Warehouse Union, Local 21
 4 ("Respondent Local 21"), and International Longshore and Warehouse Union, Local 4
 5 ("Respondent Local 4") (jointly, "Respondents"), in civil contempt of this Court and to grant other
 6 civil relief for having violated and disobeyed the Temporary Restraining Order issued by this
 7 Court on September 1, 2011,¹ pursuant to Sections 10(j) and 10(l) of the National Labor
 8 Relations Act, as amended ("the Act") (29 U.S.C. §§ 160(j) and 160(l)). The Board also seeks
 9 further interlocutory relief pursuant to the Court's general jurisdiction to enforce the Preliminary
 10 Injunction order that it issued on September 8 pursuant to Section 10(j) of the Act. In support
 11 thereof, Petitioner respectfully shows as follows.

12 On August 31, Petitioner (Richard L. Ahearn, Regional Director, Region 19, of the Board)
 13 filed with this Court a Petition for Temporary Restraining Order and Preliminary Injunction under
 14 Sections 10(j) and 10(l) of the Act seeking injunctive relief enjoining and restraining Respondents
 15 from engaging in certain conduct violative of the Act, and directing Respondents to take certain
 16 ameliorative action.

17 On September 1, this Court, by United States District Court Judge Ronald B. Leighton of
 18 the Western District of Washington, issued a Temporary Restraining Order granting that portion
 19 of the Petition for a Temporary Restraining Order under Sections 10(j) and 10(l) of the Act (the
 20 "Restraining Order"). The Restraining Order enjoined and restrained Respondents, their officers,
 21 agents, servants, employees, attorneys, and all members and persons acting in concert or
 22 participation with them, from engaging with an unlawful object in the following unlawful conduct in

¹ All dates occurred in 2011 unless otherwise indicated.

1 furtherance of their dispute regarding work performed at or related to the EGT facility: 1) picket
2 line violence; 2) threats; 3) property damage; 4) mass picketing; 5) blocking of ingress and
3 egress at the EGT facility located in Longview, Washington; and 6) in any other manner, or by
4 any other means, furthering their unlawful object, restraining or coercing employees of EGT,
5 General Construction, or any other person doing business in relation to the EGT facility in the
6 exercise of the rights guaranteed them by Section 7 of the Act (29 U.S.C. § 157).

7 Since about September 7, Respondents Locals 21 and 4, as well as those acting in
8 concert with them from the International Longshore Warehouse Union (the "International") and
9 sister Locals, as well as their officers, agents, servants, employees, attorneys, and members and
10 other persons acting in concert or participation with them, have disregarded their obligations
11 under the Restraining Order, despite efforts of Petitioner and local law enforcement officials to
12 secure compliance with that Order. Respondents' conduct, which includes blocking the ingress
13 and egress of a train attempting to make the delivery of products to EGT's facility; picket line
14 violence; mass picketing; and causing extensive property damage, demonstrates clear contempt
15 for this Court's authority. Respondents' contumacious conduct, in addition to flouting the
16 authority of this Court, interferes with employees' rights under the Act, thereby subverting the rule
17 of law. Accordingly, Petitioner orally moved on September 8 that this Court find Respondents,
18 their officers, agents, servants, employees, attorneys, and all members and persons acting in
19 concert or participation with them (including the International) in contempt of the Restraining
20 Order and to issue an appropriate purgation order, as submitted in writing to the Court.

21 On September 8 this Court, by United States District Court Judge Ronald B. Leighton,
22 also issued a Preliminary Injunction under Section 10(j) of the Act ("Preliminary Injunction"). The
23 Preliminary Injunction enjoins and restrains the International, Locals 21 and 4, their officers,

agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them, including their sister locals, from engaging in the following unlawful conduct in furtherance of their dispute regarding work performed at or related to the EGT facility: 1) picket line violence; 2) threats; 3) property damage; 4) mass picketing; 5) blocking of ingress and egress at the EGT facility located in Longview, Washington; 6) impeding rail or ship traffic anywhere destined to or from EGT's facility; and 7) in any other manner, or by any other means restraining or coercing employees of EGT, General Construction, or any other person doing business in relation to the EGT facility in the exercise of the rights guaranteed them by Section 7 of the Act.²

As set forth on its face, the Court's Preliminary Injunction remains in effect until the Court issues its final preliminary injunction order.³ Given the nature of Respondents' violations of the Act and their blatant violation of the Restraining Order, Petitioner requests that this Court extend the duration of its purgation order to the date to which the final Preliminary Injunction order extends.

II. STATEMENT OF FACTS

A. Background

EGT, a grain exporter, depends on the delivery of product to its facility in Longview to conduct its business. On July 13, hundreds of picketers and protestors affiliated with

² As noted in the motion filed on September 12, the Preliminary Injunction, despite the deferral of a decision on the \$10(l) portion at this juncture, inadvertently contains language going to "object." It is assumed for purposes herein that said inclusion was due to ministerial oversight.

³ It appears from the Court's Preliminary Injunction that the final injunctive order will issue at some point after
 Memo of Points and Authorities- Page 4
 In Support of Civil Contempt
 Civil No. 3:11-CV-05684

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Respondents blocked a 107-car Burlington Northern and Santa Fe ("BNSF") train that was attempting to deliver corn to the EGT facility by sitting or standing on or near the tracks at the EGT rail entrance and parking a car on the tracks. The train was forced to turn around and sat in a rail yard in Pasco, Washington, due to Respondents' refusals to give assurances that its agents would not block the train if it attempted delivery again. The train sat for several weeks in the rail yard, unable to unload its product due to Respondents' misconduct. Finding that Respondent's actions were tantamount to holding the train "hostage," this Court issued its Temporary Restraining Order on September 1, in part, to prohibit Respondents and their agents from engaging in any further mass picketing and blocking of ingress and egress to EGT's facility, or by any other means restraining or coercing the employees of EGT, General Construction, or any other person doing business in relation to EGT's facility.⁴ As shown below, however, Respondents and their agents almost immediately defied this Court and refused to comply with the Temporary Restraining Order in place.

B. Respondents Engage in Mass Picketing and Blocking of the Train in Vancouver, Washington, Destined for EGT's Facility

As set forth in Petitioner's reply brief filed with the Court on September 7, with the Temporary Restraining Order in place, EGT was determined to make a renewed attempt to have BNSF deliver the cargo in its 107-car train that had been sitting for several weeks. When inspecting the train on September 4, representatives of BNSF discovered that approximately 72 air hoses on the train had been intentionally cut and angle cocks moved into improper positions

completion of all matters the Court has deemed attendant to the merits of the §10(l) Petition.

⁴ The mass picketing and blocking of the train was only one of dozens of incidents of misconduct that were engaged in by Respondents and their agents that were detailed in Petitioner's Memorandum in Support of its Petition and that led this Court to grant Petitioner's request for a Temporary Restraining Order and Preliminary Injunction.

Memo of Points and Authorities- Page 5

In Support of Civil Contempt

Civil No. 3:11-CV-05684

2948 Jackson Federal Building

915 Second Avenue

Seattle, Washington

(206) 220-6301

(Declaration of Jacqueline Waters⁵). Once repaired, the train set out on its journey from the rail yard in Pasco to EGT's facility at the Port of Longview.

Upon reaching Vancouver, Washington, around 7 a.m. on September 7, however, the train was again blocked by a group of protestors who had congregated on the tracks. Although there were approximately 50 protestors blocking the tracks initially, the number quickly increased to 100 protestors. While the train remained blocked, the number of protestors continued to increase to a peak of approximately 250 people. Several of the protestors held signs denoting their affiliation with Respondents. (Incident Report of Vancouver Police Officer Mike Knotts⁶; declaration of Mark Geers⁷; NWCN.com article⁸).

When the Vancouver police arrived, the protestors, despite their signs, stated that they were not affiliated with Respondents (declaration of Geers; September 7 article from *The Columbian* showing signs⁹). Moreover, as established by the declaration of Brad Hansen, several officers of Respondents' Local 21 and 4 were present to encourage the blocking of the train. Hansen is familiar with and able to identify those officers based on his prior employment with United Grain (declaration of Brad Hansen¹⁰; see also Knotts' incident report identifying Dan Coffman, Respondent Local 21's president, as being present).

The International's president, Robert McEllrath, was also among the group of protestors blocking the tracks. Indeed, McEllrath identified himself as the leader of the protestors. McEllrath stated that the mass of picketers and protestors would not permit the BNSF train destined for EGT's facility to pass through. When presented with the Court's Temporary

⁵ Petitioner has previously filed this document with this Court. The Court has numbered it as Document 52.

⁶ Attached to this Memorandum as Exhibit 1.

⁷ Petitioner has previously filed this document with this Court. The Court has numbered it as Document 55.

⁸ Petitioner has previously filed this document with this Court. The Court has numbered it as Document 55.

⁹ Petitioner has previously filed this document with this Court. The Court has numbered it as Document 55.

¹⁰ Petitioner has previously filed this document with this Court. The Court has numbered it as Document 51.

1 Restraining Order, McEllrath stated that it did not apply because he was representing the
 2 International, not Respondents Locals 21 and 4, and that it applied only to Longview and not
 3 Vancouver. (Knotts incident Report¹¹; Declaration of Geers¹²)

4 Although the protestors did allow other trains to pass through on the tracks, the
 5 protestors remained blocking the tracks until approximately noon so that the train destined for the
 6 EGT facility could not move. At that time, a large contingent of the protestors removed
 7 themselves from the tracks and walked to Respondent Local 4's union hall a few blocks away.
 8 About an hour later, the BNSF train was permitted to resume its journey out of Vancouver.
 9 (Knotts' incident report).

10 **C. Respondents and Their Supporters Engage in Further Mass**
 11 **Picketing and Blocking of the BNSF Train at the Entrance to**
 12 **EGT's Facility**
 13

14 After leaving Vancouver, the train headed towards EGT's facility at the Port of Longview.
 15 Around 3:00 p.m. another group of approximately 300 protestors sat on tracks just outside of
 16 EGT's facility, effectively blocking the BNSF from entering the EGT facility. Protestors shouted
 17 "ILWU" and wore clothing with ILWU insignia emblazoned on it. Law enforcement officers in riot
 18 gear were summoned to the scene due to the protestors' unlawful actions. Despite several
 19 announcements from officers to the protestors to disperse because they were violating the law,
 20 protestors refused to follow the officers' orders and remained on the tracks. Officers then began
 21 arresting some of the protestors who had refused to leave.

22 As the officers began arresting the protestors, a group of protestors charged at them and
 23 forced the officers to retreat. Several of the protestors screamed at the officers and at least one
 24 protestor, a Respondent Local 21 official who was later arrested, yelled obscenities at the officers

¹¹ Attached to this Memorandum as Exhibit 1.

1 and refused to leave the tracks. Although a majority of the protestors eventually left the tracks,
 2 police were required to arrest a group of approximately 15 protestors who had refused to leave in
 3 order to clear the tracks. The BNSF train was then able to move to the EGT facility at
 4 approximately 7 or 8:30 that evening. (Arrest report and officer's affidavit with respect to arrest of
 5 Shelly Porter¹³; declaration of Jerry Gibson¹⁴; September 8 *Wall Street Journal* article¹⁵).

6 **D. Respondents' Violent Conduct Escalates and They Damage Both the**
 7 **BNSF Train and EGT'S Property**
 8

9 Arrival of the train at EGT's facility did not quell further actions by Respondents and
 10 their agents. In fact, their gross misconduct escalated as the situation became increasingly
 11 malevolent.

12 Around 4:30 in the morning of September 8, numerous protestors arrived by vehicle
 13 at EGT's facility and stormed the gates. They were armed with weapons such as baseball bats
 14 and shears.¹⁶ Charles Cadwell, a security guard employed at EGT's facility, recognized many of
 15 the protestors as Respondent Local 21 members based on his earlier employment with
 16 Weyerhaeuser, as well as previous encounters with the protestors during the prior two months.
 17 (Arrest report for Ronald Stavas; anticipated testimony.).

18 Cadwell, who was unarmed, approached a group of protestors in his security vehicle
 19 and was quickly surrounded by the mob so that he could not proceed further. Cadwell told the
 20 protestors that they could not do this and would be arrested if they did not leave. Instead of
 21 leaving, a protestor reached into the vehicle and began pulling on Cadwell's arm. Other
 22 protestors joined in and Cadwell was violently pulled out of his vehicle. As one protestor

¹² Petitioner has previously filed this document with this Court. The Court has numbered it as Document 55.

¹³ Attached to this Memorandum as Exhibit 1.

¹⁴ Petitioner has previously filed this document with this Court. The Court has numbered it as Document 55.

¹⁵ Attached to this Memorandum as Exhibit 3.

1 approached him with a 3-foot metal pipe and appeared about to strike him, Cadwell yelled that
 2 they were on camera and the protestor would be arrested. The protestor then yelled at Cadwell,
 3 "fuck you, I am not here to get you, I am here to get the train." Cadwell recognized the protestor
 4 as an ILWU picketer from earlier encounters and the picketer was later arrested for burglary,
 5 assault, and criminal sabotage. (Arrest report for Stavas; anticipated testimony).

6 Other protestors began throwing rocks at Cadwell who, fearing for his safety,
 7 retreated and ran to the guard house. There he discovered that the window at the guard house
 8 had been smashed. Other protestors then secured the vehicle that Cadwell had been driving and
 9 drove it into the ditch, resulting in extensive damage to the vehicle. (anticipated testimony).
 10 Meanwhile, the protestors caused other extensive damage at the facility. The police investigation
 11 revealed several broken windows on EGT's buildings, damage to the BNSF train's air lines, and
 12 large amounts of grain dumped from the rail cars. (Arrest report for Stavas; September 8 *Seattle*
 13 *Times* article attached to the Memorandum as Exhibit 4).

14 III. ARGUMENT

15 A. Applicable Principles of Civil Contempt

16 The Court's issuance of injunctive relief enjoining and restraining Respondents from
 17 engaging in proscribed conduct has been in effect at all times since September 1. The
 18 Temporary Restraining Order issued on September 1, and the Preliminary Injunction order issued
 19 on September 8. It is well established that an "order issued by a court with jurisdiction over the
 20 subject matter and person must be obeyed by the parties until is it reversed by orderly and proper
 21 proceedings." *United States v. United Mine Workers of America*, 330 U.S. 258, 293 (1947). This
 22 is essential because the "interests of orderly government demand that respect and compliance be
 23

¹⁶ In fact, as the photo on the front page of the *Seattle Times* demonstrates, some protestors had used their baseball

1 given" to such orders, and a party who "willfully refuses his obedience, does so at his peril." *Id.* at
 2 303. "No one, no matter . . . how righteous his private motive, can be judge in his own case.
 3 That is what courts are for." *Id.* at 308-309 (Justice Frankfurter, concurring). The power of courts
 4 "to punish for contempt is a necessary and integral part of the judiciary, and is absolutely
 5 essential to the performance of the duties imposed on them by law." *Securities and Exchange*
 6 *Commission v. First Financial Group of Texas, Inc.*, 659 F.2d 660, 669 (5th Cir. 1981), *quoting*
 7 *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 450 (1911).

8 An injunctive order of a United States district court is binding upon respondents, their
 9 officers, agents, servants, employees, and attorneys. Fed. R. Civ. P. 65(d)(2). A respondent has
 10 an obligation to take all reasonable and diligent steps within its power to insure compliance with a
 11 court's order. *See, e.g., Stone v. City and County of San Francisco*, 968 F.2d 850, 856 (9th Cir.
 12 1992). The "basic proposition is that all orders and judgments of courts must be complied with
 13 promptly." *Jim Walters Resources, Inc. v. International Union, United Mine Workers of America*,
 14 609 F.2d 165, 168 (5th Cir. 1980), *citing Maness v. Meyers*, 419 U.S. 449, 458 (1975).

15 A party is in contempt when it violates a definite and specific order of the court requiring it
 16 to refrain from performing a particular act or acts with knowledge of the court's order. *In re*
 17 *Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002). A contempt violation is established by a party's
 18 "failure to take all reasonable steps within the party's power to comply." *Reno Air Racing Assn. v.*
 19 *McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006). The contempt "need not be willful." *In re Crystal*
 20 *Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1365 (9th Cir. 1987).

21 A party seeking an adjudication of civil contempt need only establish through clear and
 22 convincing evidence that the contemnors violated a specific and definite order of the court.

1 *Federal Trade Commission v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999). The
 2 burden then shifts to the contemnor to demonstrate why it was unable to comply. *Id.* As
 3 injunctive relief pursuant to Sections 10(j) and 10(l) of the Act requires a party to comply with the
 4 relevant principles of the Act, it "implicitly incorporate[s] the basic principles that the Labor Board
 5 and the courts have developed to guide the application of these provisions." *Szabo v. U.S.*
 6 *Marine Corp.*, 819 F.2d 714, 718 (7th Cir. 1987). Accordingly, the Court should rely upon familiar
 7 and well-established principles of the Act in guiding its determination whether Respondents have
 8 violated its Temporary Restraining Order. *Id.*

9
 10
 11 **B. Respondents' Misconduct Violates the Temporary**
 12 **Restraining Order and the Act**

13
 14 As noted above, Respondents were under a legal obligation to take all reasonable and
 15 diligent steps to insure compliance with the Temporary Restraining Order. Rather than taking
 16 any steps to insure compliance, however, Respondents within days of the issuance of the Court's
 17 order embarked on a renewed campaign of destructive conduct that violated both the terms of the
 18 injunctive order and the various sections of the Act outlined and discussed in detail in Petitioner's
 19 prior pleadings .

20 Here, there can be no reasonable dispute that Respondents' conduct directly violates the
 21 terms of this Court's Restraining Order. Specifically, Respondents' conduct violates paragraphs
 22 1 and 2 of the Court's Restraining Order. Those paragraphs enjoin and restrain Respondents
 23 from: 1) [e]ngaging with an unlawful object, *inter alia*, in . . .property damage, mass picketing, and
 24 blocking of ingress and egress at the facility of EGT . . .in furtherance of Respondent Locals 21
 25 and 4's dispute regarding work performed at or related to the EGT facility," and 2) "[i]n any other

1 manner, or by any other means, furthering their unlawful object by restraining or coercing the
2 employees of EGT, General, or any other person doing business in relation to the EGT facility . .
3 .." As the above evidence amply demonstrates, Respondents' conduct in blocking the BNSF train
4 destined for EGT's facility two times in one day, and in causing extensive damage to the train and
5 EGT's property, directly conflicts with the above paragraphs of the Court's Restraining Order.

6 There can also be no dispute that Respondents and their agents, including the
7 International, were responsible for the blocking, mass picketing, and extensive property damage.
8 Affidavits already submitted to this Court and testimony to be presented to this Court establish
9 that officials of the International and Locals 21 and 4 were present and encouraged the mass
10 picketing and blocking of the BNSF train bound for EGT's facility. Picket signs also demonstrated
11 that the protestors were affiliated with Respondents and were acting in furtherance of
12 Respondent Local 21's dispute regarding work being performed at EGT's facility. Furthermore,
13 the Cowlitz County arrest reports, as well as prospective testimony from security guards at the
14 EGT site, reveal that the individuals who stormed EGT's facility and caused extensive damage to
15 the train and EGT's property were also agents of Respondents. Accordingly, Respondents,
16 including the International and any participating sister ILWU locals, are responsible for committing
17 such misconduct. *See, e.g., Iron Workers Dist. Council of the Pac. NW. v. NLRB*, 913 F.2d 1470,
18 1477 (9th Cir. 1990), *quoting NLRB v. Miramar of Cal., Inc.*, 601 F.2d 422, 425 (9th Cir. 1979)
19 (union held accountable for conduct of others where union "instigated, authorized, solicited,
20 ratified, condoned, or adopted" the unlawful conduct).

21 Although counsel for Respondents sought to excuse Respondents' contumacious
22 conduct by stating that the mobs of protestors were merely working people who were standing up
23 to attempt to protect and defend something that was of great value to them, this Court correctly

1 rejected that argument. As the Supreme Court recognized long ago, the "interests of orderly
 2 government demand that respect and compliance be given" to injunctive orders, and a party who
 3 "willfully refuses his obedience, does so at his peril." *United States v. United Mine Workers of*
 4 *America*, 330 U.S. 258, 303 (1947). "No one, no matter . . . how righteous his private motive, can
 5 be judge in his own case. That is what courts are for." *Id.* at 308-309 (Justice Frankfurter,
 6 concurring).

7 Accordingly, clear and convincing evidence establishes that Respondents are
 8 responsible for committing the acts that directly violate the terms of the Restraining Order.
 9 Respondents should therefore be found in civil contempt.

10 C. Contempt Sanctions

11 1. Cease and Desist Order; Affirmative Purgation Order; Notice 12 Remedies; Compliance Report; Discovery 13

14 The Proposed Order Adjudicating Respondents in Civil Contempt, which Petitioner filed
 15 with the Court on September 8, requests, *inter alia*, remedies requiring Respondents to refrain
 16 from specific unlawful conduct; to provide notices to Respondents, the International, and all sister
 17 locals, and all persons acting in concert or participation with them; and to file a compliance
 18 report.¹⁷ All the requested remedies are normal civil contempt remedies in cases arising under
 19 the Act. *See NLRB v. Service Employees Local 77*, 123 L.R.R.M. (BNA) 3213, 3214-15 (9th Cir.
 20 1986); *NLRB v. Teamsters Local 85*, 101 L.R.R.M. (BNA) 2933, 2934-35 (9th Cir. 1979); *NLRB v.*
 21 *Int'l Ass'n of Bridge, Structural and Ornamental Ironworkers*, Local 86 (79 LRRM 2723, 2724 (9th
 22 Cir. 1972).

23 2. Prospective Fines

¹⁷ In order to verify and ensure that Respondents have complied with the cease and desist and affirmative obligations of a Contempt order, Petitioner also requests that the Court include a provision permitting Petitioner to obtain

1 In order to coerce Respondents to fully comply with the terms of the Preliminary
 2 Injunction (both as it stands now and as prospectively ordered) and the Court's Contempt Order,
 3 and to refrain from further breaches of injunctive orders in the future, Petitioner has requested in
 4 its Proposed Order Adjudicating Respondents in Civil Contempt the imposition of a prospective
 5 fine schedule. It is established that prospective compliance fines may be assessed in a civil
 6 contempt proceeding in order to insure future compliance with court orders.¹⁸ *See, e.g., NLRB v.*
 7 *Iron Workers Local 433*, 169 F.3d 1217, 1221-22 (9th Cir. 1999) (fines for non-compliance "would
 8 serve the purpose of coercing further compliance"); *NLRB v. A-Plus Roofing*, 39 F.3d 1410, 1419
 9 (9th Cir. 1994); *Humphrey v. Southside Electric Cooperative, Inc.*, 104 L.R.R.M. (BNA) 2589,
 10 2592 (E.D. Va. 1979) (contempt proceeding under Section 10(j)). In view of Respondents'
 11 undisguised propensity for engaging in conduct in violation of the Restraining Order and the Act,
 12 the imposition of prospective fines is essential to dissuade Respondents from engaging in further
 13 contumacious conduct. Accordingly, Petitioner has requested a prospective fine of \$25,000
 14 against Respondents Local 21 and 4 for each further violation of the Preliminary Injunction or the
 15 Court's Contempt Order.

16 3. Compensatory Remedies

17 The purpose of civil contempt is not to punish but "to coerce the defendant into
 18 compliance with the court's order, and to compensate the complainant for losses sustained."
 19 *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir. 1992). Thus, in addition to the
 20 above requested remedies, Petitioner also requests that the Court order Respondents to pay the
 21 following compensatory damages due to their contumacious conduct since September 1: the

discovery from Respondents and their agents, in the manner provided by the Federal Rules of Civil Procedure regarding any matter reasonably related to compliance with the Court's Contempt Order.

¹⁸ As to the factors to be used to set the size of a civil contempt fine, *see U.S. v. United Mine Workers*, 330 U.S. 258, 304 (1947); *Perfect Fit Industries, Inc. v. Acme Quilting Co.*, 673 F.2d 53, 57 (2d Cir.), *cert. denied*, 459 U.S. ____ (1982).
 Memo of Points and Authorities- Page 14
 In Support of Civil Contempt
 Civil No. 3:11-CV-05684

Board's costs and attorneys' fees; EGT's costs and attorneys' fees; BNSF's costs; reimbursement for damage to vehicle; and additional costs incurred by law enforcement agencies incurred responding to Respondents' unlawful conduct.

With respect to the requested Board's costs and attorneys' fees, respondents who are found in civil contempt are commonly required to pay the expenses and attorneys' fees incurred by the Board in the investigation, preparation and presentation of contempt proceedings.¹⁹ See, e.g., *NLRB v. Sequoia District Council of Carpenters*, 568 F.2d 628, 636 (9th Cir. 1977); *NLRB v. Trans Ocean Export Packing, Inc.*, 473 F.2d 612 (9th Cir. 1973); *NLRB v. Service Employees Local 77*, 123 LRRM 3213, 3214-3215 (9th Cir. 1986); *NLRB v. Teamsters Local 85*, 101 LRRM 2933, 2935 (9th Cir. 1979).

It is also well settled that in civil contempt "broad compensatory awards" are appropriate to make whole other parties injured by the contumacy. *United Mine Workers of America v. Bagwell*, 512 U.S. 821, 838 (1994), citing *Sheet Metal Workers v. EEOC*, 478 U.S. 421 (1986); *Whittaker*, 953 F.2d at 516. Accordingly, to the extent that EGT incurred costs and attorneys' fees in preparing and presenting evidence in support of the investigation and litigation of these contempt proceedings due to Respondents' contumacious conduct, it too is entitled to compensation. Similarly, EGT, BNSF, and law enforcement agencies have incurred substantial costs due to Respondents' contumacious conduct and should be made whole.

4. Interim Relief

Given Respondents' blatant disregard of the Restraining Order, the nature of the relief sought by Petitioner from this Court, and the ongoing violations of the Act, Petitioner also

832 (1982).

¹⁹ No evidence will be presented on the costs and attorneys' fees incurred because the damages and other costs are still being calculated and because the legal costs and fees are ongoing until the litigation is terminated.

1 requests that the Court extend its purgation order in this case to the date to which any final
2 preliminary injunction order extends.

3 Petitioner initially sought injunctive relief from the Court for the purpose of trying to
4 prevent employees from suffering irreparable harm as a result of the Respondents' unlawful
5 conduct while the underlying unfair labor practice cases wound their way through the
6 administrative process. This Court concluded in its Restraining Order that, absent such interim
7 relief, imminent danger existed that Respondents' actions will cause irreparable harm to
8 employees' statutory rights and that the Board's final order will be frustrated or nullified. Far from
9 bringing their conduct into conformance with the law, Respondents set upon a course of flouting
10 the Court's authority and further undermining the rule of law. Thus, within days of the issuance of
11 the Restraining Order, Respondents again blocked the train headed to the EGT facility to unload
12 its cargo, severely damaged property (including the train), and assaulted security guards. In the
13 wake of this egregious conduct, it is not surprising that employees remain fearful about coming to
14 work, particularly on days when a train is scheduled to deliver grain to the EGT facility.

15 In these circumstances, it is clear that continued legal restraint against Respondents will
16 remain just and proper even after the Court issues its final preliminary injunction order.
17 Accordingly, Petitioner requests that the Court should extend the duration of its purgation order to
18 the date that its final preliminary injunction order extend, which should coincide with the Board's
19 issuance of its final administrative decision on the underlying unfair labor practice cases. Such
20 relief is proper here because the Court must have the power to enforce its Orders if the Act is to
21 be effective. *See Hoffman v. ILWU, Local 10*, 492 F.2d 929, 933 (9th Cir. 1974), *cert. granted sub*
22 *nom. on other grounds and affirmed, Muniz v. Hoffman*, 422 U.S. 454 (1975), *citing Madden v.*
23 *Grain Elevator, Flour & Feed Mill Workers*, 334 F.2d 1014, 1020 (7th Cir. 1974), *cert. denied*, 379

U.S. 967 (1965) ("in enforcing its orders, the district court may adapt the form of the application of its power according to the resistance to enforcement with which it is confronted"). *See also, Whittaker*, 953 F.2d at 516; *NLRB v. Teamsters Local 327*, 592 F.2d 921, 923 (6th Cir. 1979).

IV. CONCLUSION

Based upon the foregoing, Petitioner has shown, by clear and convincing evidence, that Respondents have not complied with the Court's Restraining Order, but have engaged in further violative conduct. Respondents are, therefore, in direct contempt of the Restraining Order and should be found in civil contempt. Moreover, the Court should impose the requested contempt sanctions against Respondents to purge Respondents of their contumacious conduct, and to coerce Respondents from engaging in further future breaches of the Court's injunctive orders.

DATED at Seattle, Washington, this 14th day of September, 2011.

/s/ Anne Pomerantz

/s/ Daniel Sanders

/s/ John Fawley

/s/ Helena Fiorianti

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September 2011, I caused copies of the Memorandum of Points and Authorities in Support of Petitioner's Motion to find Respondents in Contempt and to Sign Proposed Order Adjudicating Respondents in Civil Contempt be served upon the following parties via e-mail:

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6 DATED at Seattle, Washington this 14th day of September, 2011.
7

8 /s/ Anne Pomerantz

9 /s/ Daniel Sanders

10 /s/ John Fawley

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